

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NAMORAH BYRD, JUBAWAS BYRD, :
AWANJU BYRD-TENNYSON, :
MATEEMA BYRD, AKA SONYA BYRD, :
ET. AL :

PLAINTIFFS, :

CIVIL ACTION

v.

NO. 96-0070

MICHAEL F. DUFFY, :
MICHAEL J. DUFFY, GERARD DUFFY, :
JOE SCULLIN, JOHN/JOHNNIE/ :
JONATHAN/JOE/JACK/ JANE DOE, :
members of the Philadelphia Police :
Dept. tactical teams involved in the raid :
upon 's house at 3754 N. 15th :
Street, Philadelphia, Pa 19140 on :
12/5/93, JANE DOE, officer, :
Commanding/Supervising Officers who :
coordinated investigation and execution :
of the raid on 's home on :
12/5/93 in official and individual :
capacities, and CITY OF :
PHILADELPHIA :
DEFENDANTS. :

GREEN, S.J.

MEMORANDUM and ORDER

I. BACKGROUND

A. Procedural History

Presently before the Court is Defendants' motion for summary judgment and Plaintiffs' response thereto. The Plaintiffs initiated this action by filing a writ of summons in the Philadelphia Court of Common Pleas on December 4, 1995. Since the allegations set forth in the

writ of summons were based upon constitutional violations pursuant to 42 U.S.C. § 1983 and other state law grounds, this action was removed to the District Court for the Eastern District of Pennsylvania on January 4, 1996. Plaintiffs then filed a complaint in the District Court on February 19, 1997, alleging, inter alia, that various Philadelphia law enforcement officers conducted an illegal search in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution. Defendants answered the complaint, setting forth affirmative defenses on April 10, 1997. After reasonable opportunity for discovery, Defendants moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Defendants' motion for summary judgment is based upon assertions of qualified immunity, governmental immunity, and the Plaintiffs' failure to establish municipal liability under 42 U.S.C. § 1983. For the reasons set forth below, Defendants' motion for summary Judgment will be granted.

B. Factual Background:

On December 4, 1995, Emanuel Suarez appeared at the Civilian Complaint window of the 25th Police District seeking to report a kidnapping. Detective Joseph Scullin took the initial information from Mr. Suarez. After receiving appropriate warnings regarding the possibility of self-incrimination, Mr. Suarez explained that he received a note with instructions to call an electronic pager number immediately. After placing the call, Mr. Suarez discovered that his cousin was being held by individuals who accused him of stealing \$11,000.00 worth of illegal narcotics. According to Mr. Suarez, these accusations were true. Several months before the kidnapping occurred, Mr. Suarez and his uncle set up a series of drug thefts in North Philadelphia. Mr. Suarez strongly believed that his uncle's recent murder was directly related to these thefts. Consequently, he came to the police hoping to obtain help for his cousin.

Detective Scullin initiated the kidnapping investigation by asking Mr. Suarez to place another telephone call to the kidnappers. At the same time, Detective Gerard P. Duffy made arrangements to have Bell of Pennsylvania Security set up a trace on an administrative telephone line at the 25th District. Using this telephone line, Mr. Suarez placed two calls to the kidnappers. He placed the first call to request more time to obtain the ransom money. Shortly thereafter, he placed a second call to alert the kidnappers that he was ready to meet. The kidnappers then directed Mr. Suarez to drop the money at a bar located at Reese and Indiana Streets. When the kidnappers returned the second call, Bell of Pennsylvania Security successfully completed a trace on the administrative telephone line. According to Bell of Pennsylvania Security, both returned calls originated from 3754 North 15th Street, Philadelphia, PA. Bell of Pennsylvania also told police that the telephone number for that location was 228-8436.

After receiving the information from Bell of Pennsylvania Security, a team of police officers assembled and then departed for 3754 North 15th Street. Upon arrival, officers discovered that this was a private residence. According to Sergeant Gerard Duffy, lights were on in the house and he could visualize two males from his position on the porch. At this point, he instructed the officers to knock and announce their presence. Sergeant Duffy asserts that he could see two males inside the house when the officers knocked on the door. When he realized that the males began to run toward the stairs, Sergeant Duffy ordered the door forcibly opened.

Namorah Byrd disputes Sergeant Duffy's account of these events. Ms. Byrd contends that she was downstairs in her home when she heard a commotion outside. She then heard knocking, but, when she asked the person knocking to identify himself, no one answered. When the knocking became louder, she retreated up the stairs. Shortly thereafter, the door was forcibly

opened and a team of unidentified men entered her residence.

Once the officers entered the residence, they conducted a search for the kidnapping victim. According to Mrs. Byrd, the search included a line up of her male children, with Mr. Suarez attempting to identify one of them as the kidnapping victim. When the police could not find the kidnapping victim, they tried to ascertain whether the telephone calls coming into the administrative line at the 25th District were actually made from the Byrd residence. When the police asked the Byrds for their telephone number, the Byrds told them that their telephone number was 228-8426. This information prompted Sergeant Duffy to call Bell of Pennsylvania Security from the Byrd residence. When Sergeant Duffy furnished Bell of Pennsylvania Security with Mrs. Byrd's name and address, Bell Security told him that the telephone number for that name and location was 228 - 8436. To prove that the Bell employee was mistaken, Mrs. Byrd showed Sergeant Duffy a telephone bill displaying her telephone number. Sergeant Duffy then received information from Bell of Pennsylvania confirming that the information he received was erroneous. After confirming that the telephone calls to the administrative line did not, in fact, come from the Byrd residence, Sergeant Duffy obtained the correct address from Bell of Pennsylvania and the police subsequently apprehended the kidnappers at a bar located at Reese and Indiana Streets.

Plaintiffs, Namorah Byrd and her children, filed this civil action under 42 U.S.C. §§ 1983 and 1988, the United States Constitution, and various state laws, against Defendant police officers and the City of Philadelphia. In their complaint, the Plaintiffs allege that certain City of Philadelphia law enforcement officers conducted an illegal search of the Plaintiffs' home, causing emotional injuries as well as property damage. Defendants now move for summary

Judgment, pursuant to Fed. R. Civ. P. 56.

II. SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure states that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed.R.Civ.P. 56(c). A genuine issue as to any material fact exists “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). In reviewing the record, the court must presume that the nonmoving party’s version of any disputed fact is correct. Eastman Kodak Co. v. Image Technical Services, Inc., 504 U.S. 451, 456, 112 S.Ct. 2072 (1992). Additionally, the court must draw all reasonable inferences in favor of the non-moving party. Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir. 1995) cert. denied, 515 U.S. 1159, 115 S.Ct. 2611(1995). Although the moving party carries the burden of demonstrating the absence of a genuine issue of material fact, the non-moving party cannot merely rely upon the allegations contained in the complaint, but must offer specific facts contradicting the movant’s assertion that no material fact is in dispute. See Coolspring Stone Supply, Inc. v. American States Life Ins. Co., 10 F.3d 144, 147 (3d. Cir 1993).

Progressing to the specific issues raised in this case, Defendants move this court for summary judgment arguing that: 1) Plaintiffs failed to establish constitutional violations under 42 U.S.C. § 1983; 2) the defendant officers are entitled to qualified immunity from suit; and 3) the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8541 et.seq., shields the City of

Philadelphia and its police officers from liability.

III. DISCUSSION

A. Municipal Liability

Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.¹ Albright v. Oliver, 510 U.S. 266, 271, 114 S.Ct. 807, 811 (1994). To establish Section 1983 liability against the City of Philadelphia, the Plaintiffs must show that a state actor deprived them of a constitutional right and that this deprivation was caused by the policy, custom, or practice of the City. See Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694, 98 S.Ct. 2018 (1978). Distilled to its basic essentials, the Plaintiffs' complaint alleges that the search of the Byrd residence constitutes a violation of their Fourth Amendment right to freedom from warrantless searches, seizures, and custodial interrogations. On summary judgment, Defendants argue that the officers entered the Byrd residence due to the existence of exigent circumstances, therefore, no Fourth Amendment violations occurred.

"Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment." Parkhurst v. Trapp, 77 F. 3d 707, 710 (3d. Cir. 1995)(quoting Payton v. New York, 445 U.S. 573, 587, 100 S.Ct. 1371 (1979)). In complying with the safeguards provided by the Fourth Amendment, police must secure a warrant, based on

¹Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..." 42 U.S.C. § 1983.

probable cause, supported by oath or affirmation, before entering a person's home to search for evidence. See Sharrar v. Felsing, 128 F.3d 810,820 (3d Cir. 1997)(quoting Welsh v. Wisconsin, 466 U.S. 740, 750, 104 S.Ct. 2091, 2098 (1984)). Consequently, a warrantless police entry into a home is presumptively unreasonable. In certain situations, however, the presumption of unreasonableness accompanying a warrantless entry may be overcome by the existence of probable cause and exigent circumstances. Id. (citing Welsh v. Wisconsin, 466 U.S. 740, 749, 104 S.Ct. 2091 (1984)).

The Third Circuit has previously defined probable cause "in terms of facts and circumstances sufficient to warrant a prudent man in believing that the [suspect] has committed or was committing an offense." Sharrar v. Felsing, 128 F.3d at 817-818 (citing Gerstein v. Pugh, 420 U.S. 103, 111, 95 S.Ct. 854, 862 (1975)). In defining exigent circumstances, the Supreme Court identified four factors that justify a warrantless intrusion into a person's home: 1) hot pursuit of a fleeing felon; 2) imminent destruction of evidence; 3) the need to prevent a suspect's escape; or 4) the risk of danger to the police or other persons inside or outside the dwelling. See Minnesota v. Olson, 495 U.S. 91, 100, 110 S.Ct. 1684, 1690 (1990).

Essentially, the Defendant police officers argue that the events leading up to their entry into the Byrd residence established probable cause and created exigent circumstances, thereby relieving their duty to secure a warrant before entering the dwelling. This Court agrees. The information given to the officers by Bell of Pennsylvania disclosed that the kidnappers made a call from 3754 North 15th Street. Notwithstanding the fact that the drug dealers arranged the money drop off at a bar, a prudent man could have reasonably believed that the victim was actually being held at the address from which the kidnappers allegedly made the call.

Furthermore, given the objective facts available at the time, it was reasonable for the police to rely on Bell of Pennsylvania's information. Thus, Defendant police officers reasonably acted on a perceived threat to the safety of the young man they believed was held hostage at 3754 North 15th Street.

The criteria for establishing exigent circumstances clearly provide police officers with the authority to enter a residence without a search warrant when the risk of danger to the police or other persons inside or outside the dwelling exists. See Minnesota v. Olson, 495 U.S. 91, 100, 110 S.Ct. 1684, 1690 (1990). In the instant case, the recent murder of Mr. Suarez's uncle gave police reason to believe that the kidnappers might be armed and might also physically harm the kidnapping victim. Moreover, there is no evidence on summary Judgment that Defendant police officers believed that the kidnapping victim was not in imminent danger.

Notwithstanding the arguments made by both parties regarding whether or not the police saw men running from the living room of the Byrd residence, the actual basis for establishing exigent circumstances in accordance with Fourth Amendment law, was the kidnapping itself. Any other assertion of an exigency is not necessary to overcome the presumption against the warrantless entry. Consequently, the existence of probable cause, combined with exigent circumstances arising from the kidnapping, justified the December 5, 1993 warrantless search under Fourth Amendment jurisprudence. Therefore, the Plaintiffs' claim of a Fourth Amendment violation fails. Without a constitutional violation, the Plaintiffs cannot establish section 1983 liability against the City of Philadelphia. Thus, Defendants' motion for summary judgment on the issue of municipal liability will be granted.

B. Qualified Immunity

Assuming arguendo, that a Constitutional violation could be inferred, Defendants' are still entitled to summary judgment on the section 1983 claim because they are entitled to qualified immunity. According to the doctrine of qualified immunity, government officials performing discretionary functions are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Sharrar v. Felsing, 128 F.3d 810, 826 (3rd. Cir. 1997). In §1983 cases involving the Fourth Amendment, qualified immunity decisions require the judge to determine, not only the currently applicable law, but whether that law was clearly established at the time the action occurred. Rogers v. Powell, 120 F. 3d 446, 453 (3d Cir. 1997). If the law was clearly established at the time of the conduct at issue, then the court must determine "whether the actions of the officers, equipped with the knowledge of clearly established law, were objectively reasonable." Sharrar v. Felsing, 128 F.3d 810, 828 (1997).

1. Clearly Established Fourth Amendment Law

As stated above, the law establishing guidelines for probable cause and exigent circumstances existed at the time of the warrantless entry into the Byrd residence. See Sharrar v. Felsing, 128 F.3d 810(3d Cir. 1997)(quoting Welsh v. Wisconsin, 466 U.S. 740, 749, 104 S.Ct. 2091(1984)). Since the Courts clearly established guidelines for establishing probable cause and exigent circumstances long before the search of the Byrd residence, this court must now determine whether a reasonable officer could have believed that his conduct was lawful, in light of clearly established Fourth Amendment law and information in the officer's possession at the time of the entry. See Hunter at 227, 112 S.Ct. at 536.

2. The Reasonableness of the Police Officers' Actions.

Generally, the reasonableness of an official's belief that his or her conduct was lawful is a question of law for the court. Sharrar v. Felsing at 827. In Sharrar v. Felsing, 128 F.3d 810 (3d. Cir. 1997) the Court recognized that the jury's role in qualified immunity cases was diminished, but not totally eradicated. Id. Accordingly, "Rule 56 [still] has vitality in situations where the underlying historical facts in dispute are material to the resolution of the question whether the government officials acted in an objectively reasonable manner in view of existing law and facts available to them." Id. at 828.

In the case at bar, both parties present markedly different accounts of the circumstances surrounding the actual police entry into the Byrd residence. Defendant police officers claim that their view of men running away from the announcement of police at the door caused them to immediately enter the premises. Conversely, Plaintiffs argue that the police could not visualize men in the Byrd residence because Namorah Byrd was the only person downstairs when the police arrived. Even when this Court examines the disputed facts in the light most favorable to the Plaintiffs, it is clear that these facts are not material to the resolution of the underlying question at issue.

In the instant case, Defendant police officers believed that the circumstances surrounding the warrantless entry qualified as exigent because the kidnapping victim was in imminent danger. Although the police temporarily detained Namorah Byrd and her family while they searched for the kidnapping victim and assembled the children downstairs to ascertain whether any of them fit the kidnapping victim's description, these actions were reasonable in light of the officers' goal of rescuing a kidnapping victim. Therefore, the actions of the Defendant police officers completely conformed with the requirements of the Fourth Amendment.

In this Court's view, the undisputed facts alone are material to a determination of whether the officers' conduct was reasonable in light of clearly established law on exigent circumstances. Viewing the undisputed facts in the light most favorable to the Plaintiffs, this Court concludes that the Defendant officers reasonably believed that exigent circumstances required entry into the Byrd residence. Therefore, this Court finds that the Defendant police officers are entitled to qualified immunity as a matter of law.

C. Immunity from State Law Claims

Defendants argue that they are immune from the Plaintiffs' state law claims pursuant to the Pennsylvania Political Subdivisions Tort Claims Act, 42 Pa. C.S.A. §8541 et seq. (hereinafter, Tort Claims Act). Under the Tort Claims Act, local agencies are immune from liability for damages caused by the agency itself or its employees. *Id.*² Accordingly, the Act provides the City of Philadelphia with a cloak of immunity from suit unless the Plaintiffs plead and prove that their cause of action falls within certain exceptions provided by the Tort Claims Act. *See* 42 Pa.C.S. §8542.

Pursuant to 42 Pa.C.S. §8542, the local agency is liable for damages on account of an injury to a person or property if the damages would be recoverable under common law or statute, the injury was caused by the negligent acts of the local agency or its employees acting within the scope of their duties, and the injury occurs as a result of one of the acts set forth in subsection (b). 42 Pa.C.S. §8542(a). Section 8542 (b) designates the following eight exceptions to immunity: 1) vehicle liability; 2) care, custody, control of personal property; 3) real property; 4)

² A local agency is defined as a governmental unit other than the Commonwealth government. 42 Pa.C.S. § 8501. Therefore, the City of Philadelphia is a local agency within the meaning of the Act.

trees, traffic control and street lighting; 5) utility service facilities; 6) streets; 7) sidewalks; and 8) care, custody or control of animals. See 42 Pa.C.S. §8542(b). Since the Plaintiffs' claims do not involve one of the eight exceptions to governmental liability enumerated in the Tort Claims Act, the City of Philadelphia enjoys immunity from the Plaintiffs' state law claims.

Similarly, pursuant to the Tort Claims Act, employees of a local agency cannot exceed the liability of their employing agency. See 42 Pa.C.S. § 8545. Thus, the individual police officers named in the instant matter cannot be held liable for acts within the scope of their duties beyond the legal bounds of liability for the City of Philadelphia. It is important to note, however, that the City of Philadelphia enjoys immunity for negligent acts caused by its employees. Negligent acts, as defined in the statute, do not include acts which constitute a crime, actual fraud, or willful misconduct. See 42 Pa. C.S. §8542(a).

In Counts Four and Five of Plaintiffs' cause of action, they allege claims of false imprisonment, assault, and battery against the City of Philadelphia. The Plaintiffs have not alleged that Defendants committed crimes or actual fraud in their cause of action. Therefore, for purposes of this summary judgment motion, this Court will consider whether the Plaintiffs have stated and supported claims that the officers committed "willful misconduct" necessary to remove the shield of immunity provided by 42 Pa.C.S. § 8550.

In the context of police misconduct, as is herein at issue, the decision in Renk v. City of Pittsburgh, 537 Pa. 68, 641 A.2d 289 (1994), represents the Pennsylvania Supreme Court's position on the meaning of "willful misconduct" as it applies to 42 Pa.C.S. § 8550. The Renk decision construed "willful misconduct" to mean "misconduct which the perpetrator recognized as misconduct and which was carried out with the intention of achieving exactly that wrongful

purpose.” Id. at 74, 641 A.2d at 292 (1994)(holding that where police conduct is involved, even a jury determination that an officer has committed an intentional tort does not necessarily mean that the actions constitute “willful misconduct”). Essentially, under the Pennsylvania Supreme Court’s approach, a police officer’s tortious behavior may be categorized as “willful misconduct” only when the officer subjectively intended to do something he knew was wrongful. Id. at 76-77, 641 A.2d at 294.

In the instant case, the Plaintiffs allege that the police forcibly entered the Byrd residence based upon erroneous information. They further allege that the police failed to properly identify themselves for an inordinate amount of time after the forcible entry into the Byrd residence. Under Renk, however, these allegations do not provide evidence of the officers’ subjective intent to do something which they knew to be wrongful. To satisfy the willful misconduct requirement, Plaintiffs must point to evidence that the officers set out to do something other than lawfully retrieve a kidnapping victim. Nothing in the complaint or any part of the record suggests that the police officers’ conduct while inside the Byrd residence, rises to the level of “willful misconduct” as defined in Renk. Thus, the individual Defendants are entitled to summary judgment on all of the state law claims.

IV. CONCLUSION

Summary Judgment will be granted in favor of all Defendants with respect to Plaintiffs’ Section 1983, and state law claims. An appropriate order follows.

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ORDER

AND NOW, this 11th day of December, 1998, upon consideration of Defendants' motion for summary judgment and Plaintiffs' response thereto, the Motion for Summary Judgment is GRANTED.

BY THE COURT,

CLIFFORD SCOTT GREEN, S.J.